



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the Residential Tenancy Act (the "Act") for the following:

1. a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy pursuant to section 51 or 51.4 of the Act; and,
2. authorization to recover the filing fee for this application from the landlord pursuant to section 72.

SW (the "landlord") and SW, the landlord's husband appeared at the hearing. JA appeared as translator for the landlord.

MT (the "tenant") appeared at the hearing.

MT testified that they served the landlord with a copy of the Notice of Dispute Resolution Proceeding and their evidence on the landlord by leaving the documents in the mailbox of the landlord's residence on August 19, 2022. In support of this, MT submitted photographs of the documents in the mailbox. SW acknowledged receipt of the same.

Based on the testimony of the parties, I find pursuant to section 71(2) of the Act that the landlord was sufficiently served with all required documents in relation to today's hearing.

The landlord testified that they provided their evidence in response to the tenant's application to the residential tenancy branch office; however, after some discussion the

landlord conceded that they did not serve a copy of their evidence on the tenants. The tenant confirmed that they did not receive a copy of the landlord's evidence.

Rule 3.16 states that the respondent must be prepared to demonstrate that the applicant was served with their evidence as required by the Act and Rules of Procedure. In this case, the respondent's evidence was not served on the applicant and therefore, as the respondent was advised during the hearing, their documentary evidence that was submitted to this office has not been considered for the purposes of rendering a decision in this matter.

Both parties were given full opportunity under oath to be heard, to present evidence and to make submissions. Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant and the testimony of the landlord, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that the tenant's rented the basement suite of the residence from the former owner from May 1, 2019, to May 31, 2022. Rent was \$900.00 a month due on the first of the month.

The landlord testified that when they purchased the house, they were told the house would be handed over in vacant possession. The landlord testified that their intention when purchasing the house was to live in it for approximately two years and then demolish it and build a new house after selling their other house.

The landlord testified that due to their inability to sell their old house and changes in the market, they were compelled to stay in the new house and not demolish it. The tenant

testified that they made efforts to avoid purchasing the new house; however, they were forced to purchase it or lose \$90,000.00 and face Court proceedings.

The landlord testified that they were required to borrow money from family and friends to purchase the house. The landlord testified that all of the conditions of the purchase of the house were off on March 2, 2022. However, after three weeks house prices went down, and their realtor told them that they had to refinance.

The landlord testified that because they were not able to sell their old house, their realtor suggested that they rent the basement suite to help financially. The landlord testified that this is why they posted the realtor's advertisement seeking a tenant. Their situation was very bad at that time. The landlord testified that the basement suite is vacant and has not been rented.

When questioned as to whether the basement suite is currently for rent, the landlord testified that it is not for rent and that her daughter and mother-in-law live in the basement. The landlord testified that they live upstairs with their husband, mother, and two sons. The landlord testified that there are two bathrooms in the house, one upstairs and one downstairs.

The tenant testified that they were served a Two-Month Notice to End Tenancy (the "Two Month Notice") on March 1st, 2022. The Two Month Notice is submitted into evidence and indicates that it was issued because: "All of the conditions of the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The Two Month Notice lists the landlord as the purchaser.

The tenant testified that two weeks after the landlord occupied the house, they put multiple listings online seeking tenants for the basement suite. The tenant directed my attention to photographs of the rental listings which have been submitted into evidence.

The tenant testified that the belongings pictured in the suite in the photographs used for the rental listings are theirs. The tenant testified that they responded to one of the listings and they were advised by the landlord that the suite was available for rent starting in September 2022 and that it would be available for at least three months.

Analysis

Section 51(2) of the Act states the following:

Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In accordance with the above the landlord has the onus to prove on a balance of probabilities that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Two Month Notice and that the rental unit has been used for at least six month's duration.

The Two Month Notice was issued on March 1, 2022. The reason cited on the Two Month Notice was that "All of the conditions of the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The Two Month Notice lists the landlord as the purchaser.

The issue I must determine is whether the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Two Month Notice and that the rental unit has been used for at least a six-month duration. Based on the tenant's oral testimony and documentary evidence, I find it is evident to me that the landlord took steps almost immediately following their occupation of the house that are contradictory to the stated purpose on the Two Month Notice. The landlord does not dispute the tenant's evidence in this regard.

With that in mind, I have considered the landlord's oral testimony and I find it vague and inconsistent regarding whether the stated purpose for ending the tenancy was

accomplished within a reasonable period, and if so, for what duration. As a result, the landlord has not met the burden upon them to prove that the purpose stated on the Two Month Notice was accomplished within a reasonable period or that the rental unit was used for the stated purpose for at least six month's duration.

The landlord provided testimony that they faced significant financial difficulties following the purchase of the house and as a result, they re-listed the basement suite for rent. I infer that the landlord is suggesting that extenuating circumstances prevented them from accomplishing the stated purpose of the Notice. Residential Policy Guideline 50 addresses section 51 of the Act as well as extenuating circumstances. The onus is on the landlord to prove extenuating circumstances prevented them from accomplishing the purpose stated on the Notice.

Section 51(3) of the Act states the following.

The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, **extenuating circumstances** prevented the landlord or the purchaser, as applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Policy Guideline 50 addresses section 51 of the Act and extenuating circumstances that if established by the landlord may excuse a landlord from paying the compensation sought by the tenant in this case. Policy Guideline 50 states the following in relation to extenuating circumstances.

F. EXTENUATING CIRCUMSTANCES The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so

Based on the above, I find that the circumstances presented by the landlord are not similar to the extenuating circumstances contemplated by the Act and set out in Policy Guideline 50. I find the financial difficulties faced by the landlord as a result of a shift in the housing market is a risk that was not sufficiently assessed by the landlord prior to the purchase of the house. In my view the landlord's circumstances are more akin to a landlord failing to complete renovations because they run out of funds and not an extenuating circumstance such as a death of a family member or wildfire as contemplated in Policy Guideline 50. Ultimately, I find the landlord has not established that they faced an extenuating circumstance that should excuse them from accomplishing the stated purpose of the Notice.

Based on my findings above, section 51.3(1) of the Act applies. I issue a Monetary Order in the tenant's favour in the amount of 12 times the monthly rent payable under the previous tenancy agreement.

As the tenant was successful in their application, I find that they are entitled to recover the filing fee for this application from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$10,900.00 as follows:

Item	Amount
(12 x \$900.00)	\$10,800.00
Filing Fee	\$100.00
Total Monetary Order	\$10,900.00

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 16, 2023

Residential Tenancy Branch